

FINAL REGULATION ORDER

Proposed adoption of Subchapter 4.1, Advance Payments, sections 91040, 91041, 91042, 91043, 91044, title 17, California Code of Regulations, to read as follows:

Subchapter 4.1. Advance Payments

Article 1. General

§ 91040. Purpose.

Purpose. The purpose of this regulation is to ensure that advance payments to grantees by the State Board are consistent with appropriate and prudent controls.

NOTE: Authority cited: Sections 39600, 39601, 39603.1 Health and Safety Code.
Reference: 39603.1 Health and Safety Code.

§ 91041 Definitions.

(a) “**Advance Payments**” means payments to a grantee prior to, and in anticipation of, performance under a grant agreement.

(b) “**Audit Findings**” means listed items in the report of an auditor performing financial audits documenting where improvement is needed.

(c) “**Available Fund Balance**” means the unobligated and unrestricted funds that a grantee has available for future commitments at the time of requesting the advance payment.

(d) “**Days**” means calendar days.

(e) “**District**” means a county or regional air pollution control district or a county or regional air quality management district.

(f) “**Executive Officer**” means the executive officer of the California Air Resources Board or his or her designee.

(g) “**Good Standing**” means an entity is not subject to any form of sanction, penalty, suspension, forfeiture, or disciplinary action by the Internal Revenue Service and California Franchise Tax Board.

(h) “**Liquidate**” means that all moneys allocated for a specified grant project have been spent by the grantee for eligible project expenses.

(i)“**Material Changes**” means a change to the spending plan of twenty-five (25) percent or more in any line item in the spending plan.

(j)“**Small Air Districts**” means all county or regional air pollution control districts and all county or regional air quality management districts with a population of less than four million (4,000,000) based on data published by the California Department of Finance, Demographic Research Unit and the U.S. Census Bureau.

(k)“**Spending Plan**” means an outline of how the advanced funds will be spent within the term of the grant agreement, including project schedules, timelines, milestones, and the grantee’s fund balance for all state grant programs.

(l)“**State Board**” means the California Air Resources Board.

NOTE: Authority cited: Sections 39600, 39601, 39603.1 Health and Safety Code.
Reference: 39603.1 Health and SafetyCode.

§ 91042. Advance Payment Request Review Process.

(a) All requests for advance payments must contain the information required by Health and Safety Code Section 39603.1 and this Subchapter.

(b) The Executive Officer or his or her designee will make the final determination to approve or deny an advance payment based on the criteria set forth in Health and Safety Code Section 39603.1 and this Subchapter.

NOTE: Authority cited: Sections 39600, 39601, 39603.1 Health and Safety Code.
Reference: 39603.1 Health and Safety Code.

§ 91043. Advance Payment Criteria.

(a) *Requirements for small air districts.* To be approved for an advance payment, small air districts must provide a certification to the Executive Officer that includes all of the following:

(1) The advance payment, in the amount requested, is necessary to meet the purposes of the grant program or project and is intended to alleviate a practical business or economic situation that would inhibit the program or project.

(2) The use of the advance payment is limited to the specified activities set forth in the grant agreement.

(3) Agrees to revert all unspent funds to the state if they are not liquidated within the timeline specified in the grant agreement.

(4) Shall not use the advance payments received to provide payments in advance to any other entity, except to another district.

(b) *Requirements for all other entities.* To be approved for an advance payment, any other entity that is not a small air district must provide a certification to the Executive Officer that includes all the criteria in Section 91043(a)(1) through (3) and includes all of the following:

(1) The entity has no outstanding audit findings that relate to any funds eligible for advance payment.

(2) It is in good standing with the Franchise Tax Board (FTB) and Internal Revenue Service (IRS), and that, if the entity falls out of good standing with FTB or the IRS after an advance payment is made, the entity must return any unspent moneys to the state.

(3) Submitted to the Executive Officer a spending plan.

(4) Agrees to not provide advance payment to any other entity.

(5) Will report to the state board any material changes to the spending plan within 30 days of the change.

NOTE: Authority cited: Sections 39600, 39601, 39603.1 Health and Safety Code.
Reference: 39603.1 Health and Safety Code.

§ 91044. Severability

Each part of this subchapter is deemed severable, and in the event that any part of this subchapter is held to be invalid, the remainder of this subchapter shall continue in full force and effect.

NOTE: Authority cited: Sections 39600, 39601, 39603.1 Health and Safety Code.
Reference: 39603.1 Health and Safety Code.